

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT WALKER,

Petitioner,

Case Number: 06-13050

v.

HONORABLE AVERN COHN

CARMEN D. PALMER,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION
AND
DENYING APPLICATION FOR WRIT OF HABEAS CORPUS
AND
DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND
DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND MOTION FOR
AUTHORIZATION AS MOOT

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner Robert Earl Walker (Petitioner), a state prisoner convicted of bank robbery and third habitual offender and serving a sentence of 6-20 years, claims he is incarcerated in violation of his constitutional rights. The matter was referred to a magistrate judge for a report and recommendation (MJRR) and before whom Petitioner filed a motion for summary judgment. The magistrate judge recommends that the petition be denied and Petitioner's motion for summary judgment be denied.

Before the Court are Petitioner's objections to the MJRR. Petitioner has also

recently filed a “Motion for Reconsideration” and a “Motion for Authorization to Amend Habeas Claims and to File a Motion for Reconsideration.”

II.

The portions of the MJRR that a party finds objectionable are reviewed de novo .
See 28 U.S.C. § 636(b)(1)(C).

III.

Petitioner raises three claims: (1) that he was denied a fair trial and due process when the prosecutor introduced at trial a 1997 bank robbery conviction and which the trial court used to enhance his sentence as an habitual offender which Petitioner says is constitutionally infirm because he was denied the right to appellate counsel; (2) that trial counsel was ineffective because (a) he failed to challenge the constitutionality of his 1997 conviction, and (b) he failed to bring out the circumstances of the 1997 conviction; and (3) that appellate counsel was ineffective for failing to raise his habeas claims on direct appeal.

Respondent argues that Petitioner’s claims are procedurally defaulted because he did not raise them on direct appeal. The magistrate judge disagrees, but goes on to say that even if the claims are defaulted, it is necessary to consider the merits of the claims because Petitioner alleges ineffective assistance of counsel to overcome his default.

As an initial matter, the Court finds that the claims are procedurally defaulted. However, as the magistrate judge correctly noted, his claims should be reviewed on the merits. This is because Petitioner alleges ineffective assistance of counsel, and if Petitioner was correct, then counsel’s ineffectiveness may constitute cause and the

Court may also find prejudice to overcome the procedural default. See Edwards v. Carpenter, 529 U.S. 446, 451 (2000); Strickler v. Greene, 527 U.S. 263, 282 (1999).

The magistrate judge engaged in a thoroughgoing analysis of the merits of Petitioner's claims and concluded that none of the claims warranted habeas relief. Petitioner's objections essentially present the same arguments considered and rejected by the magistrate judge. To the extent Petitioner presents new arguments, the Court is not convinced that the new arguments warrant a rejection of the MJRR.

Accordingly, the findings and conclusions of the magistrate judge are adopted as the findings and conclusions of the Court, as supplemented above. Petitioner's application for writ of habeas corpus is DENIED and Petitioner's motion for summary judgment is DENIED. Given this determination, Petitioner's pending motion for reconsideration and motion for authorization are DENIED AS MOOT. This case is DISMISSED.

SO ORDERED.

Dated: February 7, 2008

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record and Robert Walker, 260799, Michigan Reformatory, 1342 W. Main, Ionia, MI 48846 on this date, February 7, 2008, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160